

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

JAY NELSON, individually and
on behalf of all others
similarly situated,

Plaintiff,

vs.

FOREST RIVER, INC., and DOES
1-25,

Defendants.

Civil Docket
No. CV-22-49-GF-BMM

Transcript of Motion Hearing

Missouri River Federal Courthouse
125 Central Avenue West
Great Falls, MT 59404
Thursday, February 13, 2024
2:25 p.m. to 3:21 p.m.

BEFORE THE HONORABLE BRIAN MORRIS

UNITED STATES CHIEF DISTRICT COURT JUDGE

Yvette Heinze, RPR, CSR, CVR-S
United States Court Reporter
Missouri River Federal Courthouse
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Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

1 APPEARANCES

2 PRESENT ON BEHALF OF THE PLAINTIFF:

3 Daniel Bidegaray (via video)
4 BIDEGARAY LAW FIRM, LLC
5 1700 W Koch, Suite 5
6 Bozeman, MT 59715

7 JR Conner (in person)
8 Dennis Conner(via video)
9 CONNER, MARR & PINSKI, PC
10 P0 Box 3028
11 Great Falls, MT 59403-3028

12 PRESENT ON BEHALF OF THE DEFENDANT:

13 Mark Hayden (in person)
14 Spencer Cowan (via video)
15 TAFT STETTINIUS & HOLLISTER LLP
16 425 Walnut Street, Suite 1800
17 Cincinnati, OH 45202

18 Max Davis (in person)
19 DAVIS HATLEY HAFFEMAN & TIGHE
20 P0 Box 2103
21 101 River Drive North The Milwaukee Station
22 Third Floor
23 Great Falls, MT 59401-2103

24 Also Present:

25 John Drics

1 || PROCEEDINGS

2 || (Open court.)

3 THE COURT: Madam Clerk, please call the next case on
4 the Court's calendar.

5 THE CLERK: This Court will now conduct a motion
6 hearing in Case Number CV-22-49-GF-BMM, Nelson versus Forest
7 River, Inc.

8 THE COURT: Good afternoon, Mr. Conner.

9 MR. JR CONNER: Good afternoon, Your Honor.

10 THE COURT: Good afternoon, Mr. Bidegaray. Can you
11 hear me, sir?

12 MR. BIDEGARAY: I can, Your Honor, thank you.

13 THE COURT: Good afternoon, Mr. Davis and then
14 Mr. Hayden.

15 MR. HAYDEN: Yes, sir.

16 THE COURT: And then Mr. Cowan?

17 MR. DAVIS: No. Judge, the fellow two to my right is
18 John Drics, and he is the general counsel of Forest River, and
19 he's here as the client.

THE COURT: All right. Fine. Thank you. He has a
right to be here as the client if he wishes.

22 We have a couple of matters to address today. We
23 have a motion for a protective order filed by Forest River.
24 That's Document 116. And we have plaintiff's motion for leave
25 to file a fourth amended complaint, Document 121. Plaintiffs

1 have filed a motion to certify the class. That's not yet ripe.
2 So we won't take that up today.

3 So let's focus first on -- well, do you want to do
4 the protective order first or the complaint first?

5 MR. DAVIS: Well, Judge, there's some question, at
6 least in defendants' mind. If you look at Document
7 Number 117 --

8 THE COURT: Okay.

9 MR. DAVIS: -- you addressed the protective order.
10 We're not entirely pleased or totally displeased with that
11 ruling.

12 And then in the order calling for this hearing you
13 said that the protective order, as you just announced, was
14 something to be addressed today. We certainly recognize that
15 anything you have done before final judgment --

16 THE COURT: Okay. So the protective order relates to
17 the discovery request we talked about. Let's focus first on
18 the amended complaint request. And then if we need to get into
19 any issues regarding potential discovery or not having
20 discovery, we can do it after that.

21 MR. DAVIS: That's fine.

22 THE COURT: Okay. So who is going to argue on the
23 motion for a new complaint? Mr. Bidegaray or Mr. Conner?

24 MR. BIDEVARAY: Yes. I am, Your Honor.

25 THE COURT: All right. Go ahead, Mr. Bidegaray.

1 MR. BIDEGARAY: Thank you, Your Honor.

2 First of all, sorry. I'm under the weather here a
3 little bit. Mr. Turner was going to argue this motion, but
4 he's stuck in a deposition.

5 Obviously, as the Court has pointed out today -- I'll
6 try to talk as loud as I can -- plaintiff is asking that we be
7 allowed to amend the complaint to include newly discovered
8 evidence. Basically, it's based on new evidence that's been
9 uncovered and solidified. We didn't dare file an amended
10 complaint before we had that evidence put together.

11 We filed the motion on January 15. That same day, we
12 got kind of an innocuous email with evidence that had been
13 withheld that is crucial to this. So the first brief that we
14 filed doesn't talk about that evidence because I hadn't seen
15 it, but the reply does.

16 Quick timeline, lots of motions to compel and
17 whatnot. This case was filed in May of 2022. Shortly after it
18 was filed, Forest River did a survey to see if plaintiff's
19 complaint was -- if there was anything to it. And guess what
20 they found out? There was a lot to it. And guess what
21 happened to that survey? It got buried until January 15, and
22 then it was officially produced on February 4.

23 But it would have been nice to have that evidence
24 early on. Instead of getting it, what we got was a bunch of
25 motions to dismiss, a bunch of documents, but not key

1 documents. It's one thing to get buried with a bunch of
2 documents that don't amount to anything --

3 THE COURT: Mr. Bidegaray, let me interrupt you.

4 What is the relevance of this survey? Why is this so critical
5 to your case?

6 MR. BIDEVARAY: The survey, Your Honor, we served
7 them on June 8th for service. Forest River did a survey to see
8 if the allegations of our complaint, if there was anything to
9 it. And guess what they found out? There was a lot to it.
10 60 percent of their plants were doing what we were saying. And
11 guess what they said after -- they buried that survey. They
12 didn't give it to us until --

13 THE COURT: All right. So 60 percent of the plants
14 are producing RVs that have wiring problems. Is that what you
15 are suggesting?

16 MR. BIDEVARAY: That is not suggesting. That is just
17 what they were doing.

18 THE COURT: All right. Now, as I understand, there
19 has been a nationwide recall by Forest River. Doesn't that
20 correct the problem?

21 MR. BIDEVARAY: It does not. Because, first of all,
22 the nationwide recall, as we put in the affidavit, first, it
23 only addresses two of the models.

24 And, secondly, it doesn't address all of the problems
25 in the 7-way and associated wiring. So, no, it doesn't come

1 close to addressing the problem.

2 And, third, they continue to make -- we found in the
3 field, in our field -- we didn't dare file an amended complaint
4 because we knew there was going to be a motion to dismiss filed
5 right on the heels of us filing an amended complaint. So we
6 knew we needed facts. We thought we were going to get facts
7 through deposition and normal discussions. Of course, guess
8 what we didn't get? The stuff we needed so that we could come
9 to you and say, "Judge, here's what's going on. We got a bunch
10 of left-handed stuff. We didn't get the truth."

11 And so then we had to spend hundreds of thousands of
12 dollars to do a field investigation. That was finally compiled
13 sufficient enough. That's why we waited until we dang sure
14 knew so that when they filed their motion to dismiss, we were
15 going to be able to come to you and say, "Judge, here's the
16 deal. Here's the truth." Because we weren't getting it in
17 discovery.

18 In fact, we weren't even getting key depositions. I
19 don't know if the Court recalls, but we said we need to change
20 the scheduling order; we need to extend it. And they resisted
21 it. They wanted us to go forward with no facts. They didn't
22 want us to know the truth. And then the Court kind of did a
23 modified -- split-the-difference deal.

24 And they didn't make key witnesses available until
25 January of 2025, and we needed those witnesses. It was in

1 those depositions that we finally discovered enough facts to
2 find out about this 2022 survey.

3 On January 16th, we took the deposition of a fellow
4 by the name of Matt Gingerich. During that deposition, he
5 finally disclosed what was going on to a certain extent. We
6 didn't really know what the documents they innocuously dropped
7 on us the day before, informally. It was just in an email.
8 "Attached, please find" -- you can see it. It's an exhibit.
9 We attached it.

10 But, anyway, during the deposition we discovered
11 enough to figure out, holy smokes, there's something there.
12 And then when we finally got it and had our experts analyze it,
13 it was, like, my goodness. And then we had to do some emails
14 back and forth, "Please read the chain."

15 One of the things, that email chain with Mr. Hayden,
16 he says, "Oh, we just got this survey, these documents, today.
17 So we're quickly giving them to you," un-Bates stamped and what
18 have you. Well, what the email doesn't say is -- it doesn't
19 say whether their law firm knew about it.

20 The Taft Law Firm, there's an inhouse counsel. I
21 haven't heard his name before, Mr. Drics. But Melissa Macchia
22 is a Taft Law Firm attorney. She attends -- she was on the
23 partial recall that was enacted. She attends a lot of their
24 meetings. Mr. Papageorge, I think he's on this Zoom call.
25 He's in the Taft Law Firm. He attends a weekly meeting with

1 Forest River regarding fire risk.

2 So I don't know. At this stage we're probably going
3 to have to do more discovery to find out what they knew and
4 when they knew it. But one thing for sure, Judge, we didn't
5 know it, and that's not right.

6 And if there's anything that justifies a motion to
7 amend is you can't -- first of all, this is a serious problem.
8 Secondly, you can't reward -- it needs to be fixed. This
9 problem needs to be fixed. There's no way it can be fixed
10 without a class action. As Posner, Judge Posner said, "You'd
11 have to be a lunatic to go after someone like Forest River."
12 They even told us yesterday, "If the judge grants the motion to
13 amend, we're going to file another motion to dismiss."

14 THE COURT: Mr. Bidegaray, why can't you address
15 these discovery issues as part of the class certification
16 process?

17 MR. BIDEVARAY: I agree with you, Judge. We probably
18 can. We're going to have to get into that. I want to know
19 what they know and when. I definitely want to know that.

20 THE COURT: Why do you need to amend the complaint?

21 MR. BIDEVARAY: What's that?

22 THE COURT: Why do you need to amend the complaint if
23 you can address these issues as part of the class certification
24 process?

25 MR. BIDEVARAY: Well, two things: One, the amended

1 complaint sets forth facts that we weren't able to get timely
2 in discovery. The deadline to amend was January, I think, of
3 2023. We hadn't even had rulings yet on the motions to
4 dismiss, the multiple motions to dismiss that they filed at
5 that stage. And we had done no discovery by that point.
6 That's Point 1.

7 Point 2, for class certification, we've added three
8 causes of action. One of the issues this Court knows well is
9 commonality. And Forest River in their warranty claims puts
10 that Indiana law applies under the Consumer Protection -- not
11 Consumer Protection Act, but the Warranty Act, and there's case
12 law that dovetails the consumer protection claims as well, that
13 that would --

14 THE COURT: There's nothing new about Forest River
15 being an Indiana corporation, is there?

16 MR. BIDEGARAY: No. It's the warranty claim,
17 Your Honor, that under class certification there would be
18 commonality under that claim. They are going to come back to
19 you. They're going to fight every issue that we ever bring up,
20 and they're going to fight it. And it will be a lot stronger
21 ground if it's based on the commonality of the Indiana claims
22 because it's in the warranty of each -- it's in the warranty of
23 each RV -- towable RV that they sell.

24 THE COURT: Well, again, I guess, why do we need a
25 fourth amended complaint when we talked about you could get

1 some of this stuff through the discovery during the class
2 certification process?

3 MR. BIDEGARAY: Well, the main reason for the fourth
4 amended complaint is to flesh out the truth and add those
5 Indiana claims.

6 We can probably get certification on negligence, but
7 they're going to object on commonality with negligence. We
8 wouldn't have that argument, Your Honor, with regard to the
9 Indiana consumer protection claims and they're not -- the
10 warranty claims.

11 And they're not -- there's nothing new about that.
12 They argue about new discovery. No. These are all based on
13 the exact same allegations from the beginning.

14 THE COURT: Mr. Bidegaray, if Forest River files a
15 motion to dismiss -- if you file a fourth amended complaint and
16 they turn around and file a motion to dismiss, as you claim
17 they will, how would we meet the deadlines that are currently
18 set in the case for motions and trial?

19 MR. BIDEGARAY: Well, I'll try to brief it as fast as
20 I can, for one.

21 Two, I would suspect Forest River -- they've already
22 asked us. We need to get a -- they said, "Listen, if he grants
23 this, can we get together and do a new proposed briefing
24 schedule?" I assume they are going to want a new deadline. I
25 just assume try it when you have it set.

1 We have one deposition that they didn't make the
2 fellow available, a super key witness. That's going to be here
3 next week. We'll take that deposition. That will be darn
4 interesting.

5 THE COURT: How much of the discovery do you have?

6 MR. BIDEGARAY: Well, there's a couple more people,
7 but that's -- to be honest with you, we'd have to brainstorm
8 after we take this next deposition. It's not a lot more, and
9 there's not a lot more physical document discovery we're going
10 to need. We need to finish the deposition that we wanted to
11 try to get complete well before this hearing, but the witness
12 wasn't made available.

13 THE COURT: Who is the witness?

14 MR. BIDEGARAY: A fellow by the name of Leo Akins,
15 Judge. He's the guy that ordered this 2022 survey. He knows
16 all about it. It will be an interesting deposition to say the
17 least. But, anyway, that's going to be in a couple of days.
18 And then I think maybe one or two more witnesses, but maybe
19 not.

20 I'd like to keep the trial date. I'd like to keep
21 the heat on them. I'd like to have a jury, and I'd like a jury
22 of Montana citizens to decide this case sooner than later.

23 THE COURT: All right. Anything else you want to
24 say?

25 MR. BIDEGARAY: I just think it would be a tragedy to

1 reward these guys for the discovery abuse that's taken place.

2 THE COURT: All right. Mr. Hayden, do you want to
3 respond, please?

4 MR. HAYDEN: Yes, sir. Thank you.

5 Well, you just heard Mr. Bidegaray say that there's
6 nothing new, and he's right. There's nothing new in terms of
7 allegations.

8 THE COURT: Explain to me what this 2022 survey is
9 and Mr. Akins's involvement, please.

10 MR. HAYDEN: Yeah. There was a 2022 survey that was
11 done. No, we, as counsel, didn't know about it. But it was
12 done internally. After they received this complaint, they did
13 what they thought was a confident survey of --

14 THE COURT: After Forest River received the
15 complaint?

16 MR. HAYDEN: Yes.

17 THE COURT: Okay.

18 MR. HAYDEN: Not before the plaintiff's allegations.
19 It was after his allegations that they did this survey. They
20 thought it was a confident business survey. We didn't know
21 about it. When it came up in discovery in a deposition of a
22 Forest River witness, we turned around and produced it hours
23 after the deposition. So as soon as we knew about it, we
24 produced it.

25 And it doesn't show that 60 percent of the plants

1 have a problem. It shows that two plants that manufacture
2 fifth wheels, Cedar Creek and Impression, may have had a
3 manufacturing or assembly issue, the same wiring issue that is
4 the subject of the recall. And you will remember we've already
5 recalled Cedar Creek. So it was only two plants of fifth
6 wheels.

7 What Mr. Bidegaray is talking about is he's talking
8 about all travel trailers. Well, that survey did not indicate
9 a problem with travel trailers. So that 60 percent number is
10 just not true.

11 And Mr. Akins -- Your Honor, Mr. Akins is a witness
12 that they named in their complaint, their original complaint.
13 In paragraph 10, they named Leo Akins. I encourage you,
14 Your Honor, to go back and look at their original complaint
15 because he's right in there on paragraph 10. That's how
16 important he was.

17 And Mr. Bidegaray met Mr. Akins in April of 2024
18 during the inspections of the vehicles.

19 They scheduled Mr. Akins's deposition for August 27,
20 2024, and then the plaintiffs unilaterally canceled it. Then
21 they rescheduled it for January 14, 2025. And on the morning
22 of Mr. Akins's deposition, they unilaterally canceled the
23 deposition.

24 Now they have scheduled it a third time to start next
25 week. We'll see if they actually take it or not. But they

1 have unilaterally canceled his deposition twice.

2 And his allegation about Leo Akins is just simply
3 false. They knew about him. They've taken a long time to take
4 his deposition, and they've canceled his deposition twice.

5 Your Honor, really the key issue here is your
6 decision in *Peterson v State Farm*. That's the key case. And
7 in your decision in *Peterson*, what you said is that good cause
8 to excuse noncompliance with the scheduling order exists only
9 if the pretrial schedule cannot reasonably be met despite the
10 diligence of the party seeking the extension.

11 And the party seeking the extension here was not
12 diligent in bringing the amended complaint. And so the inquiry
13 should end, without even getting to Rule 15, with Rule 16.
14 Because if you go through their complaint, what you will see is
15 allegation after allegation in their original complaint that
16 Forest River had wiring defects in its RVs. They allege unsafe
17 wiring and wiring defects in paragraphs 38, 58, 87, 95A, and
18 112. So that's five paragraphs where they allege wiring
19 defects in their original complaint.

20 And then in their original complaint, they allege
21 that Forest River concealed all of these wiring defects. And
22 in their original complaint, they brought a breach of express
23 warranty and implied warranty in their original complaint, and
24 then they decided to drop those claims when they filed an
25 amended complaint.

1 So Mr. Bidegaray cannot say with a straight face that
2 they need to add these warranty claims now when they had them
3 in the original complaint and for whatever reason decided to
4 drop them.

5 THE COURT: Mr. Hayden, tell me the origin of the
6 2022 survey, when you became aware of it and when it was
7 produced to plaintiffs and what relevance it has to these
8 claims.

9 MR. HAYDEN: We learned about the 2022 survey during
10 a deposition of one of the witnesses, Your Honor. I believe it
11 was Rodney Smith. And right after that deposition, we asked
12 the client about it. We obtained it from Matt Gingerich, the
13 day after or the day of Rodney Smith's deposition.

14 THE COURT: Is Mr. Gingerich a Forest River employee?

15 MR. HAYDEN: Yes, he is.

16 THE COURT: Who commissioned the survey?

17 MR. HAYDEN: Leo Akins asked Mr. Gingerich to check
18 into the allegations in the complaint. And Mr. Gingerich, a
19 young guy, very serious guy, new to the job, thought the best
20 way to do that would be to send out a written survey. So he
21 sent out a written survey to the various manufacturing plants
22 of Forest River.

23 THE COURT: How many are there?

24 MR. HAYDEN: Your Honor, I think there's -- I think
25 there's about 12 to 15 plants that manufacture fifth wheels

1 spread all over the United States.

2 THE COURT: So did the survey cover only fifth
3 wheels?

4 MR. HAYDEN: No, it covered travel trailers and
5 actually campers. And so when we received that 2022 survey,
6 right after we learned about it, we immediately produced it.

7 And Matt Gingerich, who commissioned the survey, was
8 deposed after we produced it. So they had it when they deposed
9 Matt Gingerich.

10 And, yeah, as I said, what it shows is it shows
11 problems with two plants manufacturing fifth wheels.

12 THE COURT: What percentage of fifth wheels produced
13 by Forest River are manufactured at those two plants?

14 MR. HAYDEN: I don't know precisely, Your Honor, but
15 I would say it's maybe 5 to 10 percent.

16 THE COURT: Okay.

17 MR. HAYDEN: Of the fifth wheels.

18 THE COURT: And the survey that showed problems, were
19 these wiring problems consistent with the wiring problems
20 identified in the plaintiff's complaints.

21 MR. HAYDEN: Yes.

22 THE COURT: Okay.

23 MR. HAYDEN: Yes.

24 THE COURT: All right.

25 MR. HAYDEN: And I think that really gets to the

1 heart of this, Your Honor. They --

2 THE COURT: When was that disclosed to plaintiffs,
3 the survey, please?

4 MR. HAYDEN: The survey was disclosed in January of
5 this year.

6 THE COURT: All right. So you were critical of
7 plaintiffs for postponing this deposition of Mr. Akins. Do you
8 think it would be reasonable, when they get the survey in
9 January, to postpone that January deposition until they can
10 find out what the survey says?

11 MR. HAYDEN: That's not why they postponed it,
12 Your Honor. They called us before the deposition and said one
13 of the attorneys was ill. And so that's why it was postponed.

14 But, you know, it's -- I guess really what I'm doing
15 is responding to their allegation that we've somehow delayed in
16 producing Leo Akins. We've offered him up. And I think,
17 Your Honor --

18 THE COURT: You do concede, though, you didn't
19 provide the survey until January '25?

20 MR. HAYDEN: Yes. Yes. But I think, you know, the
21 key issue here, when you look back at the standard, the good
22 cause standard, is that the factual allegations that they are
23 relying upon now were all in the original complaint. None of
24 this is new.

25 The Indiana Consumer Act that they want to bring a

1 new claim for is very similar to the Montana Consumer Act that
2 they have been litigating for two years. It's very similar.
3 And they knew when they brought their original complaint that
4 Forest River was an Indiana corporation. So they could have
5 brought that --

6 THE COURT: Where are these two plants that are
7 identified in the 2022 survey? Are they in Indiana?

8 MR. HAYDEN: Cedar Creek is in Indiana. I don't know
9 where Impression is.

10 THE COURT: So assume for a minute that -- you argued
11 previously that plaintiffs filed their initial complaint with a
12 warranty claim and that plaintiffs voluntarily dismissed those
13 warranty claims as part of the amended complaint. Is that
14 correct?

15 MR. HAYDEN: Yes.

16 THE COURT: All right. So assuming they had reason
17 to dismiss -- I'm not sure why. I'm assuming they had some
18 reason for dismissing the warranty claim voluntarily in the
19 amended complaint -- why shouldn't they be allowed to bring the
20 warranty claim now that they have discovered these problems
21 with these two plants?

22 MR. HAYDEN: Because all of the facts that provide a
23 basis for the warranty claim they had when they filed their
24 original complaint.

25 THE COURT: Okay.

1 MR. HAYDEN: It's all related to their allegation
2 about defective wiring, and they allege concealment of that,
3 and all of that is in the original complaint. So this is --
4 it's nothing new. And that's why, you know -- that's why your
5 decision in *Peterson* is so on point because they are two years
6 late in requesting this amendment.

7 And this amendment is going to blow up our schedule.
8 We're going to have to file a motion -- we will file a motion
9 to dismiss.

10 THE COURT: Well, hold on. Let me interrupt you.
11 This isn't a new -- this case has been in discovery for a
12 number of years. Right?

13 MR. HAYDEN: Yes, sir.

14 THE COURT: And we've developed a record pretty well
15 so far. Correct?

16 MR. HAYDEN: Yes, sir.

17 THE COURT: All right. So assume I allowed, for sake
18 of argument, plaintiffs to file an amended complaint, why
19 couldn't you just file a motion for summary judgment instead of
20 a motion to dismiss? You'd get the same result because you
21 already know what the record is. And the standard on summary
22 judgment is a little bit lower than on a motion to dismiss.

23 MR. HAYDEN: Well, I think, Your Honor, we have -- we
24 would first file a motion to dismiss before we would file a
25 motion for summary judgment.

1 THE COURT: Well, I understand that, but that's a
2 high threshold, you know, no circumstances under which they
3 could prevail, as opposed to summary judgment. Well, you have
4 the record before us. Tell me why this warranty claim or
5 whatever is not going to survive to trial?

6 MR. HAYDEN: Well, we may consider that. But either
7 way, we're looking at a dispositive motion, Your Honor.

8 THE COURT: Well, I understand that. I'm trying to
9 figure out what the delay is, what the delay would be.

10 MR. HAYDEN: They are also adding a whole bunch of
11 new facts in this amended complaint and three new causes of
12 action.

13 And we want to take the plaintiff's deposition and
14 his wife's deposition over these new causes of action. We
15 didn't have a chance to conduct discovery on these new causes
16 of action. So if you amend -- if you allow them to amend, then
17 we're going to want to take some discovery on the new causes of
18 action that they are asserting.

19 THE COURT: So do you think that would require the
20 need for a new scheduling order?

21 MR. HAYDEN: Yes, sir. We would have to adjust our
22 expert reports too because these are new causes of action.

23 THE COURT: How do you respond to plaintiff's claim
24 that minimal discovery would be left?

25 MR. HAYDEN: I mean, for Forest River, we would have

1 to take -- we'd have to take new discovery. We would send out
2 document production requests. We would send out
3 interrogatories. We'd need to take the plaintiff's deposition
4 again.

5 So it's hard to -- it's hard to sit here and
6 anticipate exactly how much discovery we would need, but we
7 would need to take discovery on those new claims.

8 THE COURT: Let me change the subject just a bit
9 here, Mr. Hayden. There was a disclosure I believe -- I can't
10 remember the date on this, but the schematic of the wiring
11 system. When did that take place?

12 MR. HAYDEN: The schematic was disclosed very early
13 in discovery. It may have been one of the first documents. I
14 think it's Bates-Stamped Number 12. So it's very early.

15 THE COURT: I thought plaintiffs were arguing there
16 was something disclosed more recently on the schematic. Hold
17 on.

18 Mr. Bidegaray, is that your position? There was
19 something more recently disclosed on the wiring system?

20 MR. BIDEVARAY: Yes.

21 THE COURT: What is that, sir?

22 MR. BIDEVARAY: On February 4, 2025, there was a
23 schematic disclosed for travel trailers that shows the exact
24 issue that we're talking about. It isn't just for fifth
25 wheels. This problem is to all towable RVs.

1 THE COURT: Thank you.

2 So, Mr. Hayden, what was disclosed on February 4th of
3 2025, regarding the schematic of the wiring system?

4 MR. HAYDEN: Yeah, the schematic that was disclosed
5 in February was a travel trailer schematic. And what was
6 originally produced was a schematic on fifth wheels. The
7 plaintiff owned a fifth wheel. That's the schematic that we --

8 THE COURT: Okay.

9 MR. HAYDEN: -- that we believed applied.

10 THE COURT: So is the schematic for the travel
11 trailers similar or identical to the schematic for the fifth
12 wheels?

13 MR. HAYDEN: Very different and different in a very
14 important way. The standards for RVs do not require
15 overcurrent protection for the 7-way cord and travel trailers.
16 So that schematic does not show overcurrent protection because
17 it's not required under the standards. And that is the
18 standard in the industry, not to put overcurrent protection on
19 the 7-way cord and travel trailers because -- this is
20 important -- because the 7-way cord never enters the RV. And
21 under the standards, because it doesn't enter the RV, campers
22 and travel trailers do not require overcurrent protection on
23 the 7-way cord. It is required on fifth wheels but not on
24 travel trailers or campers.

25 Now, if you notice what the plaintiff has been doing

1 recently is they like to use the word towables. And when they
2 use the word "towable," what they're trying to do is throw
3 everything into the same basket when these RVs are very
4 different. Campers are very different than fifth wheels, and
5 fifth wheels are very different than travel trailers.

6 So the standards are different. The requirements are
7 different.

8 THE COURT: Remind me again of the scope of the
9 recall. What vehicles were included?

10 MR. HAYDEN: The scope of the recall was Puma fifth
11 wheels, which is what the plaintiff owned, and Cedar Creek
12 fifth wheels going all the way back to their original
13 production date.

14 THE COURT: What about any travel trailers or
15 campers?

16 MR. HAYDEN: No, none of those have been recalled.

17 THE COURT: So what relevance, if any, does the
18 schematic you disclosed in February of 2025 have the plaintiffs
19 claimed regarding the fifth wheels?

20 MR. HAYDEN: We don't believe it has any relevance to
21 their claim. But they were asking questions in the deposition
22 about the schematic for travel trailers. We let witnesses
23 answer. So we decided to go ahead and voluntarily produce that
24 schematic.

25 THE COURT: Okay. Anything else? Take a minute if

1 you like.

2 MR. HAYDEN: Well, Your Honor, in their reply brief
3 the plaintiff alleges that good cause exists under Rule 16
4 because there's a serious ongoing safety concern. And, again,
5 Forest River disputes that there's a serious ongoing safety
6 concern.

7 Despite extensive discovery, there's been no evidence
8 that the alleged wiring defects in the 7-way cord have caused
9 any injuries or deaths. Zero injuries or deaths in the
10 mountain of discovery that has been produced.

11 But even if you accept that there is a safety
12 concern, they alleged safety concerns in their original
13 complaint. In paragraph 95, plaintiff alleged that these
14 wiring defects could cause serious injuries, deaths, and fires.
15 So the safety concerns did not prevent plaintiff from bringing
16 these claims two years ago and within the Court's deadline.

17 And, again, we really -- really, that gets back to
18 the heart of this motion. If you look at that original
19 complaint, the wiring defects are all in the original
20 complaint. The alleged concealment is in the original
21 complaint. These alleged safety concerns are in the original
22 complaint. Nothing stopped them from bringing these warranty
23 claims and this Indiana consumer claim in their original
24 complaint.

25 And they shouldn't be bailed out now because they

1 think that this might help their class action. The Court
2 shouldn't bail them out because they should have brought that
3 in their original complaint. And all of the facts that they
4 needed are set forth in their original complaint.

5 THE COURT: All right. Anything else, Mr. Hayden?

6 MR. HAYDEN: No, sir.

7 THE COURT: Mr. Davis?

8 MR. DAVIS: Yes. One thing my cocounsel missed, and
9 certainly Dan can -- Mr. Bidegaray can respond about how
10 crucial this lately discovered survey from 2022 is. In their
11 reply brief -- and Mr. Bidegaray has made a point previously of
12 saying they've spent hundreds of thousands of dollars
13 investigating these claims. And we see now for the first time
14 in the reply brief, Document 129. They identify two experts
15 that they've paid hundreds of thousands of dollars to look at
16 scores of travel trailers. It's a footnote on page 2 of the
17 reply brief. These are their experts they've paid hundreds of
18 thousands of dollars to, to see how pervasive the problem is.

19 The idea that they got something from a survey that
20 Mr. Akins commissioned in 2022 has got nothing to do with their
21 claimed knowledge of what they allege to be the extent of the
22 problem. You can't have it both ways. You can't pay hundreds
23 of thousands of dollars to hire experts to go out and look at
24 God knows how many travel trailers or fifth wheels, and then
25 say, "Oh, we didn't know that we had this information till we

1 got the survey that Mr. Akins commissioned several years ago."
2 So there's an inconsistency there with what plaintiff is
3 representing.

4 THE COURT: All right. Anything else, Mr. Davis?

5 MR. DAVIS: Well, you asked about if this case can
6 stay on track, and as you noted -- well, first of all, those
7 experts are going to be deposed by Forest River. And I don't
8 know if they'll want to depose our experts. We have some.
9 They haven't been disclosed yet.

10 Number 2, when we go down the class action
11 certification -- I was going to say "rabbit hole," perhaps
12 that's not the correct characterization. But the idea that
13 this case can stay on track at that point seems at best to me
14 extremely remote.

15 THE COURT: All right. Thank you.

16 Mr. Bidegaray, what's a "towable"?

17 MR. BIDEVARAY: Your Honor --

18 THE COURT: Pardon?

19 MR. BIDEVARAY: Yes. I apologize, Your Honor. Can
20 you hear me?

21 THE COURT: Yes. What's a towable?

22 MR. BIDEVARAY: A towable RV is a fifth wheel, a
23 travel trailer -- which is, a travel trailer, some people,
24 including me, reference it to a bumper, where instead of
25 hooking it up with a fifth wheel on the back of your pickup, it

1 hooks onto your bumper -- and then a tent pop-up trailer.
2 Those are the three types of towables. They all have this
3 issue.

4 And our experts will absolutely unequivocally be able
5 to explain to you why what Mr. Hayden represented to you that
6 that overcurrent protection doesn't apply to travel trailers or
7 pop-ups is dead wrong. And they will also be able to explain
8 to you what they saw in the field.

9 What we needed to do -- first of all, we shouldn't
10 have to spend hundreds of thousands of dollars, like Mr. Davis
11 keeps talking about that there's an inconsistency. No. We
12 shouldn't have to spend hundreds and hundreds of thousands of
13 dollars trying to figure out the truth. We should be able to
14 do that through Rule 1, normal discovery. I mean, that's
15 ridiculous. That is straight up ridiculous.

16 They should produce the documents. They shouldn't be
17 denying allegations. They shouldn't be filing motions to
18 dismiss and making representations to you. If you go back and
19 look in their representations that they made to you, including
20 representations today, they're straight up wrong.

21 THE COURT: Like what?

22 MR. BIDEGARAY: First of all, that overcurrent
23 protection doesn't apply in travel trailers. Give me a break.
24 Or a pop-up? That is just straight up wrong. Those things
25 will start fires and burn people up in those just as fast as

1 they will in a fifth wheel.

2 And then they say, "Oh, there's no proof." First of
3 all, when these things burn, you know what's left? A pile of
4 molten metal. I can show you plenty of pictures.

5 Their system doesn't even allow them to enter deaths.
6 It doesn't even allow them to enter a death. There is a death
7 claim. They tried to enter it. And guess where it started?
8 Right in the front, right where this problem is. But guess
9 what they wanted to do? They wanted to fight the claim. They
10 didn't want to give the guy --

11 THE COURT: I don't like guessing. So why don't you
12 just tell me. Okay, Mr. Bidegaray?

13 MR. BIDEVARAY: What?

14 THE COURT: I said I don't like guessing. So why
15 don't you tell me.

16 MR. BIDEVARAY: Well, I'm telling you, there's at
17 least one death claim, probably two, that we know of, just from
18 our own independent investigations.

19 And they don't investigate these. They don't do root
20 cause analysis. They don't do anything to get to the bottom of
21 the truth, and they darn sure don't do anything to fix the
22 problem. We need your help for that. So that's where we're
23 at.

24 MR. DAVIS: Your Honor --

25 THE COURT: Hold on. We'll get to you.

1 Go ahead, Mr. Bidegaray.

2 MR. BIDEVARAY: Anyway, so this problem is way
3 broader than fifth wheels. Yeah, they want to pigeonhole it
4 to --

5 THE COURT: Does your complaint target just fifth
6 wheels, or does it target all towables, as you define them?

7 MR. BIDEVARAY: It targets everything. It targets
8 everything.

9 But we didn't get discovery on anything other than
10 fifth wheels. That's part of the problem.

11 THE COURT: Did you ask for discovery beyond fifth
12 wheels?

13 MR. BIDEVARAY: Yes. So we ended up having to do our
14 own investigation, and it wasn't sufficiently complete.

15 If we would have amended the complaint, Judge,
16 without having people raise their right hand, blood flowing
17 through their veins, and look you right in the eye and explain
18 to you what the problem was and why, and they saw it with their
19 own eyes, we would have been faced with another motion to
20 dismiss, and you would have been faced with "I don't like
21 guessing." And I don't blame you for not liking to guess. You
22 can't.

23 But guess what? Okay. I used it again. Sorry. But
24 now that we've sufficiently spent the money, gathered the
25 evidence, we can come to you with proof, and we have. Read the

1 affidavit of Dr. Rojas and Dr. Angle. Read them.

2 This is a problem. It needs fixed. And no -- a
3 lunatic would take these guys on for, you know, \$1,000, \$12-,
4 \$1,300 of damage per trailer, a lunatic.

5 THE COURT: Mr. Bidegaray, how do you respond to the
6 argument that the Court's decision in *Peterson v State Farm*
7 precludes granting a motion to file your fourth amended
8 complaint here?

9 MR. BIDEVARAY: First of all, in *Peterson*, there was
10 no newly discovered evidence like there is here. There was
11 nothing like that in *Peterson*.

12 They actively concealed and tried to get this case
13 dismissed using up your time, our time, give me a -- you know,
14 *Peterson* is completely distinguishable.

15 THE COURT: So let's go back, again, to the newly
16 discovered evidence, the survey. Does it cover fifth wheels or
17 all towables?

18 MR. BIDEVARAY: It covers all towables, and the --
19 there's another misrepresentation. He says, "Only two." No.
20 I will bring witnesses in, experts that actually know what they
21 are talking about. 60 percent of their plants are doing it
22 wrong, and they didn't -- and he said 12 plants or something.
23 They have over 64 plants. They surveyed 64 plants, but there's
24 more than 64 plants. They surveyed the Indiana plants. There
25 are plants outside of Indiana, Judge. They didn't survey

1 those.

2 The field investigation, we're still trying to get to
3 the bottom of exactly where everything was produced, which
4 plants. We've got most of that, on our own, not through
5 discovery, because we're not getting straight answers on some
6 of that. But the problem is way bigger. Come on. That is
7 completely unfair to you. "Oh, two plants, 10 percent of the
8 models." That is not true.

9 THE COURT: Anything else, Mr. Bidegaray?

10 MR. BIDEVARAY: No, Your Honor.

11 THE COURT: Mr. Hayden, you wanted to respond to
12 something?

13 MR. HAYDEN: Yes. Thank you, Your Honor.

14 So if Mr. Bidegaray has some proof of a death or an
15 injury caused by a 7-way cord, he ought to produce it in
16 discovery. I'm not aware of that, and they haven't produced
17 anything to support those statements. If that's discovery they
18 have, they ought to produce it to us. They haven't produced
19 anything like that.

20 We have -- and getting to the issue of whether the
21 7-way cord and a travel trailer requires overcurrent
22 protection, we have the premier expert in the industry. He
23 literally ran the organization that sets the standards for RVs,
24 and he will testify that travel trailers do not require
25 overcurrent protection.

1 Mr. Bidegaray sits there and acts like, no. You
2 know, we're making some misrepresentation. We have an expert
3 who will say that.

4 And then, finally, our survey wasn't of just Indiana
5 plants. We surveyed plants all over the country in 2022 to see
6 if there was an issue.

7 THE COURT: How many plants do you have?

8 MR. HAYDEN: Again, Your Honor, I -- I think you
9 asked me earlier.

10 THE COURT: Mr. Bidegaray -- you said 12 or something
11 like that. Mr. Bidegaray suggests there's over 60.

12 MR. HAYDEN: I can't -- I don't want to -- I don't
13 want to misrepresent anything to you, Your Honor, and I can't
14 remember the exact number of plants. I think you asked me
15 earlier about fifth wheel plants, and I believe that's a much
16 smaller number. But in terms of how many plants that make all
17 towables, I can't give you that answer right now.

18 THE COURT: Let me just ask: Does Forest River track
19 incidents with their RV? If someone reports, "I was at the
20 campground. My towable started on fire." Does that go into a
21 database somewhere?

22 MR. HAYDEN: Absolutely. We have warranty records
23 that go back -- that go back to 2015, and we're now working on
24 producing those through 2013. And we've produced all of that
25 to the plaintiffs.

1 THE COURT: Mr. Bidegaray alluded to the fact that
2 there's an inability of Forest River to track deaths from these
3 products. What is he talking about there?

4 MR. HAYDEN: No. We have a way of tracking deaths
5 and injuries, Your Honor, and we do track deaths and injuries.

6 THE COURT: Have you provided that information to the
7 plaintiff?

8 MR. HAYDEN: Yes. Yes.

9 And the warranty information on fires related to
10 7-way cords, we've produced that for all towables, not just
11 fifth wheels, all towables.

12 THE COURT: The warranty information.

13 MR. HAYDEN: Yes.

14 THE COURT: Do you have any idea how many claims have
15 been filed on the warranties for your towables based on the
16 7-way wiring defects?

17 MR. HAYDEN: That is -- that is in the range of 70 to
18 80 claims.

19 THE COURT: How many towables have you produced?

20 MR. HAYDEN: Tens of thousands.

21 THE COURT: And those 70 to 80 claims, have those
22 been resolved already?

23 MR. HAYDEN: Yes.

24 THE COURT: Okay.

25 MR. HAYDEN: Yes. And we have a method for tracking

1 fires, for injuries, and deaths. And that information has been
2 produced to the plaintiffs.

3 THE COURT: So I asked Mr. Bidegaray about, instead
4 of filing an amended complaint, pursuing some of this discovery
5 as part of the class certification process. And his concern
6 was that Forest River is going to challenge plaintiffs on the
7 commonality factor; there's not enough similarity between the
8 circumstances of the individual class members and the defects
9 they are alleging. How do you respond to that?

10 MR. HAYDEN: We are going to do that, and we're going
11 to do that regardless of whether he files an amended complaint
12 or not. An amended complaint isn't necessary to -- you know,
13 if you read their amended complaint, it's like they want to
14 summarize all of the facts they've discovered, and that's not
15 the -- you don't need to do that in a complaint. Rule 8 is
16 just a --

17 THE COURT: If you want to avoid a motion to dismiss,
18 it's one of the preferred tactics, I think.

19 MR. HAYDEN: But all of the allegations that provide
20 a basis for their claims are contained in their original
21 complaint.

22 THE COURT: All right. Anything else?

23 MR. HAYDEN: Just a sec.

24 THE COURT: Go ahead.

25 (Off-the-record discussion between Mr. Hayden and

1 Mr. Drics.)

2 MR. HAYDEN: We have an obligation, Your Honor,
3 through -- to NHTSA to report any injuries and deaths.

4 THE COURT: Tell me for the record, the National
5 Highway Transportation Safety Administration?

6 MR. HAYDEN: Yes, sir.

7 THE COURT: Okay. To report injuries or deaths?

8 MR. HAYDEN: Yes.

9 THE COURT: Okay. And those records are available
10 and have been produced?

11 MR. HAYDEN: Yes.

12 THE COURT: All right. Anything else, Mr. Bidegaray?

13 MR. BIDEVARAY: No, Your Honor.

14 THE COURT: All right. Then, what is our current
15 trial date?

16 MR. HAYDEN: September of 2025.

17 THE COURT: All right. Well, I see no reason why we
18 can't keep that schedule one way or another. So I will get an
19 order out on this as soon as I can. Try to keep this case
20 moving. In the meantime, continue your discovery efforts, and
21 I'll have an order out as soon as possible.

22 Thank you for your time, Counsel.

23 (The proceedings concluded at 3:21 p.m.)

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REPORTER'S CERTIFICATE1
REPORTER'S CERTIFICATE

2 I, Yvette Heinze, a Registered Professional
3 Reporter, Certified Shorthand Reporter, Certified Verbatim
4 Reporter-Steno, certify that the foregoing transcript is a true
5 and correct record of the proceedings given at the time and
6 place hereinbefore mentioned; that the proceedings were
7 reported by me in machine shorthand and thereafter reduced to
8 typewriting using computer-assisted transcription; that after
9 being reduced to typewriting, a certified copy of this
10 transcript will be filed electronically with the Court.

11 I further certify that I am not attorney for, nor employed
12 by, nor related to any of the parties or attorneys to this
13 action, nor financially interested in this action.

14 IN WITNESS WHEREOF, I have set my hand at Great Falls,
15 Montana, this 14th day of February, 2025.

16
17 /s/ *Yvette Heinze*

18 _____
19 Yvette Heinze
20 United States Court Reporter
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24
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